APPEAL NO. 93044

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 *et seq*. (Vernon Supp. 1993). On December 14, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding, to determine issues relating to whether the claimant was an employee of (employer)., or CEBCOR on (date of injury); whether claimant suffered a leg injury that arose out of and in the course and scope of his employment on (date of injury); and whether claimant gave employer notice of a leg injury no later than 30 days after (date of injury). The hearing officer determined that the claimant failed to establish that he suffered an injury that arose out of and in the course and scope of his employment on (date of injury).

(Ins co), carrier herein, filed an appeal only as to the finding that (AG), owner of . (GGCI), had the right of control and exercised the right of control over claimant's work on (date of injury); and that the hearing officer erred in concluding that claimant was a borrowed servant of GGCI on (date of injury). The carrier's appeal is filed solely for the purpose of preserving its right to further appeal those findings in the event claimant appeals findings and conclusions adverse to claimant's contentions. The claimant has neither filed an appeal nor a response.

Claimant in this case was a carpet salesman. He had been hired by AG, owner of GGCI in 1986. Claimant subsequently completed an application for employment with CEBCOR, an employee leasing company, on December 26, 1989, but continued to work for GGCI in the same capacity with the same duties and under the same supervision. Claimant testified he completed the CEBCOR application in order to continue the same insurance benefits claimant had with GGCI. AG of GGCI agreed to sponsor a baseball team of one of GGCI's biggest accounts, if claimant played on the team. Claimant suffered a broken leg while playing on the baseball team on (date of injury). The hearing officer found that claimant's injury did not arise out of and in the course and scope of his employment on (date of injury). One of the hearing officer's findings and conclusions was that AG, owner of GGCI, had, and exercised, the right of control over claimant on October 19th and that claimant was a borrowed servant of GGCI.

DECISION

Finding that carrier was relieved of liability for benefits under the 1989 Act by the decision of the hearing officer, and further finding that this decision has not been appealed by the claimant, we have determined that a review of the conclusion of the hearing officer that claimant was a borrowed servant of GGCI is moot, and the decision of the hearing officer is final.

The Appeals Panel has previously held that points of appeal raised for the first time in a response will not be considered if that response is not filed within 15 days after the

decision of the hearing officer is received.[1] Because of this holding, a carrier is required to preserve error on portions of the decision it disputes, just as the carrier in this case has done, even if the carrier was ultimately found not to be liable. *See* Texas Workers' Compensation Commission Appeal No. 92618, decided January 4, 1993.

Any subsequent judicial appeal of the injury or notice issues and the resulting discharge of the carrier from liability would appear to be ruled out by operation of the 1989 Act, Article 8308-6.62(b). Therefore, we determine that a discussion on the issue raised by the carrier is moot and this constitutes our determination on each issue as required by Article 8308-6.42(c).[2]

Thomas A. Knapp
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Joe Sebesta
Appeals Judge

[1]Texas Workers' Compensation Commission Appeal No. 92109, decided May 4, 1992.

[2]Similar holdings of the Appeals Panel were made in Texas Workers' Compensation Commission Appeal No. 92450, decided October 9, 1992, and Texas Workers' Compensation Commission Appeal No. 92599, decided December 21, 1992.